IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO. 160 OF 2007

Shri Shreekant Chiragandh Mahamuni .. Appellant
v/s.
Sachdeo Chitragandh Mahamuni and another .. Respondents

Mr.Surel S. Shah for the appellant.

CORAM : A.M. KHANWILKAR, J.
DATED : 5TH JULY, 2007

P.C.

Heard counsel for the appellant. The sole argument canvassed before this court is that the courts below having accepted the fact asserted and deposed to by the appellant that the defendant No.1 was signatory to the document Exhibit 53 and had put his signature thereon and the suit property being part of the properties referred to in the said Partition Deed Exhibit 53, it was inappropriate to refuse the decree of partition. However, this submission clearly overlooks the concurrent finding of fact reached by the courts below on the crucial issue as to whether the suit property was purchased by the plaintiff and Ramchandra utilising the joint family income and nucleus. In so far as that issue is concerned, both the courts below on appreciating the evidence on record, have recorded the finding against the appellant-plaintiff. That finding will bind this court. There is nothing wrong either in the approach or the conclusion reached by the courts below on that aspect. There is evidence on record to uphold the concurrent finding of fact by two courts below on that count. Once it is found that the suit property was self-acquired property of the plaintiff and

Ramchandra, the question of the said property becoming subject matter of partition on the assumption that it is joint family property, does not arise. It makes no difference if the document Partition Deed, Exhibit 53 including the fact that the signature of the defendant No.1 on the said document has been proved. Thus understood, no case for interference is made out.

2. For the aforesaid reasons, it is not necessary to go into the correctness of the other reasons recorded by the courts below to hold against the appellant-plaintiff. Hence dismissed.

(A.M. KHANWILKAR, J.)